# RE SHUIB HJ IBRAHIM, EX P BPK CREDIT & LEASING SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
VINCENT NG J
[BANKRUPTCY NO: D1-29-1491-2000]
12 AUGUST 2003
[2003] CLJ JT(2)

***BANKRUPTCY:*** *Receiving and adjudication orders - Validity of - Whether bankruptcy notice bad for claiming interest therein - Whether recovery of interest wholly time-barred by s. 6(3) Limitation Act 1953 if execution instituted six years after judgment date - Construction of s. 6(3) - Ratio of House of Lords decision in Lowsley & Anor v. Forbes - Whether interest recoverable up to six years before date of execution - Decision of Federal Court in United Malayan Banking Corporation Bhd v. Ernest Cheong Yong Yin - Whether distinguishable on ground that bankruptcy notice was completely unchallenged by judgment debtor - Application of s. 3(2)(ii) Bankruptcy Act 1967*

***CIVIL PROCEDURE:*** *Interest - Judgment debt - Whether recovery of interest wholly time-barred by s. 6(3) Limitation Act 1953 if execution instituted six years after judgment date - Construction of s. 6(3) - Ratio of House of Lords decision in Lowsley & Anor v. Forbes - Whether interest recoverable up to six years before date of execution - Decision of Federal Court in United Malayan Banking Corporation Bhd v. Ernest Cheong Yong Yin - Whether distinguishable on ground that bankruptcy notice was completely unchallenged by judgment debtor*

This was an appeal by the judgment creditor ('the JC') against the decision of the senior assistant registrar ('the SAR') allowing the judgment debtor's application to annul and rescind the receiving and adjudication orders ('the RAO') made against the judgment debtor ('the JD'). The underlying principle upon which the SAR had annulled and rescinded the RAO was that the bankruptcy notice – which was filed after the expiry of six years from the date of the default judgment – had wrongly included (an element of) interest on the judgment debt. Hence, the principal issue that fell for determination in the instant appeal was whether, in view of the recent decision of the Federal Court in *United Malayan Banking Corporation Bhd v. Ernest Cheong Yong Yin* [2002] 2 CLJ 413 FC *('Ernest Cheong')*, the JC's claim for interest was, indeed, time-barred by virtue of the second limb of s. 6(3) of the Limitation Act 1953 ('the 53 Act').

**Held: (allowing the appeal)**

**[1]** The Federal Court's rationale in *Ernest Cheong* appears to be twin-based. The first basis being the '**perceived**' ratio of the House of Lords decision in *Lowsley & Anor v. Forbes* [1998] 3 All ER 879 *('Lowsley')* – as having held that interest on judgement sum is irrecoverable if execution is instituted after six years from the date of judgment. The second basis concerns the construction of the word 'arrears' in the phrase 'no arrears of interest' used in the second limb of s. 6(3) of the 53 Act. (p 684 b)

**[2]** However, the ratiocination in *Lowsley* is indicative that the House of Lords had in fact decided that, on execution, s. 24(2) of the (English) Limitation Act 1980 (which is in *pari materia* with s. 6(3) of the 53 Act) bars a judgment creditor from claiming for a period in excess of six years in interest, and also that such interest shall run for a period of six years before the date of execution. Clearly, therefore, Lowsley is **no** authority for the proposition that recovery of any interest is barred if execution is instituted after six years from the date of judgment. (p 686 e-f)

**[3]** Furthermore, the phrase 'no arrears of interest … shall be recovered after the expiration of six years …' in s. 6(3) of the 53 Act can be construed to mean, either the interest on only the portion that exceeds six years, or on the entire or whole period of six-plus years, if execution proceedings are commenced after six years from the judgment date. The statutes of limitation merely bar a plaintiff's remedy and not his cause of action which remains extant. Besides, a judgment debt is a court-sanctioned debt – which is a right vested in a judgment creditor. This being so, it stands to reason that when, in its deliberations to determine whether a vested court-sanctioned debt is time-barred by statute, a word or a phrase is capable of alternative construction, the court should resolve the issue by adopting the construction that is more favourable to the judgment creditor. (pp 686 h & 687 a)

**[4]** Although *Ernest Cheong* is of retrospective application, a distinction must be drawn between the facts obtaining in it and in the instant appeal. In *Ernest Cheong*, the debtor there had applied to set aside the bankruptcy notice. Indeed, right at the outset, from the court of first instance (see *Re Ernest Cheong Yong Yin ex p UMBC Bhd* [2002] 2 CLJ 481 HC) to the Federal Court, the debtor had sought to impugn, for being time-barred, the bankruptcy notice dated 24 January 1996 which was founded on a judgment obtained on 15 October 1987, due to the inclusion therein of interest amounting to RM179,297.01. Whereas, in the instant appeal, the bankruptcy notice was accepted by the JD without any demur. Therefore, since no

challenge was made on the bankruptcy notice or any amount set out and itemised in the bankruptcy notice, it was incumbent upon the instant court to apply s. 3(2)(ii) of the Bankruptcy Act 1967 (the 67 Act), which provides that a bankruptcy notice shall not be invalidated if "the sum specified in the notice as the amount due exceeds the amount actually due" unless the debtor gives notice to the creditor within the time allowed for payment (that is, within seven days of the service of the bankruptcy notice, if effected within Malaysia). In other words, the bankruptcy notice herein was regularised due to the JD's non-compliance with s. 3(2)(ii) of the 67 Act. (p 688 a-e)

**[5]** A debtor who intends to show cause against a creditor's petition may only do so by motion supported by an affidavit (unless the court otherwise directs) as mandated under r. 18 of the Bankruptcy Rules 1969 ('the 69 Rules'), and he shall also file a notice in Form 16 pursuant to r. 117 of the 69 Rules. Compliance with both rr. 18 and 117 are mandatory, and non-compliance is not curable under s. 131 of the 67 Act or r. 274 of the 69 Rules. Section 3(2)(ii) of the 67 Act is also a mandatory provision, the non-compliance with which is not curable under either s. 131 of the 67 Act or r. 274 of the 69 Rules. (p 689 b-c)

**[6]** In the final analysis, it would **not** be unreasonable to allow up to six years' interest on a court-sanctioned judgment debt in executions commenced between six and twelve years post-judgment. (p 689 c-e)

*[Receiving and adjudication orders valid.]*

**Case(s) referred to:**

*Choice Investments v. Jeromnimon [1981] WLR 84* ***(foll)***

*Development & Commercial Bank Bhd v. Datuk Ong Kian Seng [1995] 3 CLJ 307 FC* ***(foll)***

*Lowsley & Anor v. Forbes (t/a LE Design Services) [1998] 3 All ER 897* ***(foll)***

*Re Arunachalam, ex p Indian Overseas Bank Ltd [1968] 1 MLJ 89* ***(refd)***

*Re Ernest Cheong Yong Yin, ex p United Malayan Banking Corporation Bhd [2002] 2 CLJ 481 HC* ***(refd)***

*Re Khaw Siew Suan, ex p Asia Commercial Finance (M) Bhd [2000] 8 CLJ 516 HC* ***(foll)***

*Re Kho Kok Siew, ex p MUI Bank Bhd [1993] 1 MLJ 208* ***(refd)***

*Re Lim Ah Hee, ex p Perwira Affin Bank Bhd [2000] 3 CLJ 354 CA* ***(refd)***

*Ronex Ltd v. John Laing Construction Ltd & Ors [1982] 3 All ER 961* ***(refd)***

*Tan Ah Tong v. Dato' Seri Dr Kuljit Singh [2002] 6 CLJ 484 HC* ***(refd)***

*United Malayan Banking Corporation Bhd v. Ernest Cheong Yong Yin [2002] 2 CLJ 413 FC* ***(dist)***

*Wee Chow Yong t/a Vienna Music Center v. Public Finance Bhd [1990] 1 CLJ 176; [1990] 3 CLJ (Rep) 349 HC* ***(refd)***
*Yeo Chu Hui v. Lim Cheng Jin & Anor [1993] 3 CLJ 432 HC* ***(refd)***

**Legislation referred to:**
Bankruptcy Act 1967, ss. 3(2)(ii), 131
Bankruptcy Rules 1969, rr. 18, 117, 274
Limitation Act 1953, s. 6(3)
Rules of the High Court 1980, O. 42 r. 12, O. 45 r. 1(3), O. 46 rr. 1, 2(1)(a)

Limitation Act 1980 [UK], s. 24(1), (2)

*For the appellant/judgment creditor - R Santhi (Cik Jetty); M/s Ghani & Co*
*For the respondent/judgment debtor - CS Murtti; M/s Sundra Murtti & Co*

*Reported by Gan Peng Chiang*

## JUDGMENT

**Vincent Ng J:**

**Preamble**

Before me is an appeal (*vide* encl. 27) by the judgment creditor (JC) against the decision of the learned senior assistant registrar (SAR) on 12 June 2002, wherein he allowed the judgment debtor's (JD) application to annul and rescind the receiving and adjudication order dated 14 August 2001. His sole ground for allowing the application was that the bankruptcy notice (BN) which was filed after a lapse of six years from the date of the judgment had included an amount in (an element of) interest on the judgment debt – though limited to a period of only six years from the date of judgment.

After close reading of the cause papers and careful consideration of the issues of law I allowed the JC's appeal, and it is against my decision that the JD has filed a notice of appeal to the Court of Appeal. It may be pertinent to set out the salient chronology of events pertaining to this case. The JC obtained default judgment in the Kuala Lumpur Magistrate's Court against the JD on 9 June 1988 for RM15,025.12 together with interests and costs. About 11 years and 10 months thereafter, on 10 April 2000, the bankruptcy notice was filed, grounded on the default judgment. Then, on 28 September 2000, as the BN was not at all challenged by the JD, the JD filed a creditors petition, and the receiving and adjudication order was made on 14 August 2001. It is common ground that: the BN was issued by the JC well over six years after judgment was obtained; the BN included interest on the judgment debt which, it is important to note, was limited to a period of only six years post judgment; and, until the adjudication and receiving order was granted the JD never raised any dispute on the amount claimed in the BN on interest or otherwise.

The following particulars were enumerated in the BN:

| | | |
|---|---|---|
| (a) | Judgment sum | RM15,025.12 |
| (b) | Interest at 8% p.a. from 16 January 1988 to 8 June 1994 | RM 7,696.15 |
| (c) | Interest from 9 June 1994 to 10 April 2000 | nil |
| (d) | Costs | RM 500.00 |
| | Total | RM23,221.27 |

On the question of whether bankruptcy is a form of execution proceedings, I had occasion to express the following view in *Tan Ah Tong v. Dato' Seri Dr. Kuljit Singh* [2002] 6 CLJ 484 at p. 490:

> Obviously, the six year rule is intended to discourage the judgment creditor – who is expected to act with vigour to recover the fruits of litigation – from holding the Sword of Damocles over the head of the judgment debtor for an indefinite and inordinate number of years. This must be so as a bankruptcy action being an execution in pesonam is by far a more impartial and traumatic event (entailing a gamut of personal restrictions) on the judgment debtor than an execution in rem against his property.

I am of the considered view that bankruptcy proceedings are also caught within the strictures in O. 46 r. 2(1)(a) of the Rules of the High Court 1980 (RHC), as O. 45 r. 1(3) thereof provides that "enforcement (or execution) of a judgment or order" (under O. 46 r. 1) also includes enforcement under "the written law relating to bankruptcy or to winding-up of companies". Order 46 r. 2(1)(a) is a discretionary bar which may be hurdled by the court's leave being obtained. See *Wee Chow Yong t/a Vienna Music Center v. Public Finance Bhd* [1990] 1 CLJ 176; [1990] 3 CLJ (Rep) 349. Consequently, leave of the court ought to be secured should a bankruptcy notice be filed after six years from the date judgment is obtained. It must be noted that as over six years had elapsed after the default judgment was obtained the JC have safeguarded their execution proceeding when they ensured that leave was obtained under O. 46 r. 2(1)(a) to commence the bankruptcy proceeding.

It is an undisputed fact that the learned SAR based his decision solely on the Federal Court decision in *United Malayan Banking Corporation Bhd v. Ernest Cheong Yong Yin* [2002] 2 CLJ 413 *(Ernest Cheong)* which decision, be it good, bad or indifferent law, is binding as much on the SAR as on me under the doctrine of precedent. He must have been persuaded by the singular fact

that since the BN in this case was filed after the expiry of six years, any claim for interest is time barred by virtue of the second limb of s. 6(3) Limitation Act 1953 (the Act), as was decided in *Ernest Cheong*.

The Federal Court's rationale in *Ernest Cheong* appears to me to be twin based. The first basis being the perceived ratio of the House of Lords decision in *Lowsley & Anor v. Forbes* [1998] 3 All ER 897 (Lowsley) – as having held that interest on judgment sum is irrecoverable if execution is instituted after six years from date of judgment. And, the second concerns the construction of the word 'arrears' in the phrase 'no arrears of interest' used in the second limb of s. 6(3) of the Act.

On the first basis, let us now endeavour to ascertain the upshot and ratio of the decision in *Lowsley*, which was based on the following factual matrix. On 2 February 1981 the plaintiffs obtained a judgment by consent against the defendant in the sum of £70,000. By 9 July 1992 the judgment debt plus 11 1/2 years' interest at 15% had grown to £184,199. The plaintiffs obtained, *inter alia*, leave from the master to enforce the judgment under RSC O. 46 r. 2(1)(a). Tuckey J, who had heard the appeal from the master's decision, was seized with two questions of law for determination. He held: firstly, that s. 24(1) of the Limitation Act 1980 did not bar execution of a judgment after six years post judgment but only a fresh action on the judgment (the first question); and secondly, that when a judgment was executed later than six years post judgment, a proper construction of s. 24(2) of the (English) Limitation Act 1980 would limit interest on the judgment to a period of **six years before the date of execution** (the second question). He accordingly reduced the interest to six years at 15%, making £133,000 in all, and made the orders for execution absolute in that amount. On appeal, the Court of Appeal agreed with Tuckey J on the first question, but, on the second question, held that interest **should run from the date of judgment** rather than six years before the date of execution and restored the order of the master. The defendant appealed to the House of Lords. To be noted is that s. 6(3) of our Limitation Act 1953 is in *pari materia* with s. 24 of the (English) Limitation Act 1980.

On the second question, the House of Lords was called upon to rule: "whether, when a judgment is executed after six years, interest on the judgment is limited under s. 24(2) to a period of **six years before the date of execution**" (see p. 899 at c). It is pertinent to bear in mind that in the High Court, in *Lowsley*, Tuckey J decided that "when a judgment was executed after six years, **interest** on the judgment was limited to a period of six years **before the date of execution**". But on appeal, the Court of Appeal held that **interest** should run

for six years **from the date of judgment**. In regard to the second question, Lord Lloyd of Berwick, who delivered the judgment of the House of Lords, had this to say (at p. 907 at b to d):

> Nor is the Court of Appeal's reasoning supported by the legislative history. If it is legitimate to go back to the 1939 Act in order to construe s. 24(2) of the 1980 Act, then it is equally legitimate to go back to the 1833 Act, where, as has already been seen, the provisions which are now contained in s 24(1) and (2) were in separate sections, namely ss. 40 and 42. Section 42 was a freestanding provision which limited the recovery of interest to a period of six years from when it became due. The provision was later applied to judgment debts carrying interest under s. 17 of the Judgment Acts 1838. So as to the second question I prefer the decision of Tuckey J, who held that s. 24(2) limits recovery by way of execution on all judgments to a period of six years, including the judgment in this case. …
>
> The plaintiffs assert that a fact relevant to their right to recover interest was fraudulently or deliberately concealed by the defendant, that fact being his own whereabouts, and the whereabouts of his assets. Tuckey J dealt with the point as follows:
>
> > But on my reading of s. 32 this point does not get started because s. 32 only applies to a "a period of limitation prescribed" for "any action". **The recovery of interest on a judgment debt is not in my judgment an action.** I think the terms of the section make this plain so s. 32 does not apply to s. 24(2) and therefore the application which is now made to me does not get off the ground. …
>
> On the second question therefore I would allow the appeal and restore the judgment of Tuckey J. But on the first question, on which Tuckey J and the Court of Appeal were in agreement, I would dismiss the appeal.

All the other three Law Lords concurred with Lord Lloyd on the first question but in regard to the second question each intoned in unison precisely these words: "I would allow the appeal and restore the judgment of Tuckey J on the second question." The essential gist of the judgment on the second question could be gleaned from the fact that the House of Lords ordered a refund to the defendant of only £39,777.48 in interest rather than the whole aggregate 11 1/2 years' interest at 15% which had grown to £184,199.00. It could thus be gathered from the above quoted passages that the House of Lords did not hold that the judgment creditor in *Lowsley* was barred from claiming any interest if execution proceedings are instituted after six years from date of judgment. The Law Lords could not have decided that way, as being a self acknowledged 'nation of shopkeepers' English judges' decisions often display a marked degree of sensitivity to commercial practices and imperatives. It is of vital importance

to bear in mind that this right to interest in an execution commenced after six years post judgment was never canvassed at any stage in the proceedings at the High Court level or the ensuing appeals.

Unfortunately, the *Lowsley* judgment (no pun intended) also contains the following passage which, through infecilitous choice of words and lack of elucidation, would appear to cloud its decision. The passage reads (see p. 906 at h (the passage)) as follows:

> With regret, however, I cannot agree with the Court of Appeal on the second question. There would seem to be no reason why the relevant words in s. 24(2) 'no arrears of interest … shall be recovered' should not be given their ordinary meaning, so as to bar execution after six years in respect of all judgments. It is what the words say. 'Recovered' has a broad meaning. It is not confined to recovery by fresh action.

Consequently, our Federal Court was placed in an unenviable position when *Lowsley* presented itself for consideration. It appears that the passage was latched on by the Federal Court in *Ernest Cheong* as one of the two basis of its ratio debarring recovery of any interest on executions instituted after six years; which, I may add, with the greatest respect, was not what was, in effect, decided in *Lowsley*.

On the second question, I find that the tenor, import, drift and main thrust in the ratiocination of the House of Lords decision read as a whole – and indeed its very upshot – is indicative that the apex court of England had in fact decided that, on execution, s. 24(2) of the (English) Limitation Act 1980 bars a judgment creditor from claiming for a period in excess of six years in interest and also that such interest should run for the period of six years before the date of execution. Clearly, the judgment is no authority to support the proposition that recovery of any interest is barred if execution is instituted after six years from date of judgment. Thus, in the instant case before me, if the JC had claimed any interest for a period exceeding six years post-judgment, the BN would be nullified. See *Re Lim Ah Hee, ex p Perwira Affin Bank Bhd* [2000] 3 CLJ 354.

I shall now turn to the second basis of the Federal Court's rationale in *Ernest Cheong*. I am of the opinion that the word 'arrears' bears an alternative interpretation. The phrase 'no arrears of interest … shall be recovered after the expiration of six years …' in s. 6(3) of the Limitation Act 1953 (Act 254) could be construed to mean, either the interest on only the portion of the period that exceeds six years, or on the entire or whole period of six-plus years, if execution proceeding is commenced after six years from judgment obtained. It has been held in *Ronex Ltd v. John Laing Construction Ltd and Ors* [1982]

3 All ER 961 that the statutes of limitation merely barred a plaintiff's remedy but not his cause of action which remains extant. See also *Yeo Chu Hui v. Lim Cheng Jin (f) & Anor* [1993] 3 CLJ 432. Further, a judgment debt is a court-sanctioned debt which is a right vested in a judgment creditor. This being so, it stands to reason that, when in its deliberations to determine whether a vested court-sanctioned debt is time barred by statute, a word or a phrase is capable of alternative construction, the court should resolve the issue by adopting the construction that is more favourable to the judgment creditor.

Nevertheless, I stand bound to apply the clearly expressed ratio in *Ernest Cheong* if the fact matrix of the ratio dovetails, on essential points, the fact matrix of the issue that calls for determination in the current case. Counsel for the JC was, with respect, amiss on the law when he submitted that *Ernest Cheong* is only of prospective application. It is trite that all judgments of the superior courts are of retrospective application (quite unlike the case of legislation where a distinction between procedural and substantive legislation is drawn). Suffice for me to invoke and adopt the eminently illustrative views of Lord Denning MR (CA) in *Choice Investments v. Jeromnimon* [1981] WLR 84, expressed in the following language:

> … True it was in United States dollars, but it was still a "sum" standing to his credit. It was, I think, also a "debt", because judgment could be given for it in U.S. dollars as a debt. No one was aware of this until the law was so declared by this court and the House of Lords in the line of cases culminating in *Miliangos v. George Frank (Textiles) Ltd.* [1976] AC 443, ([1975] All ER 1076). But the decision in *Miliangos* was, I think, retrospective. Every decision of the House in its judicial capacity is retrospective. It declares what the law is and always has been. The House of Lords has no jurisdiction to change the law. It can hold that a previous decision was wrong and can be departed from: but not that it was right up till now and can be changed for the future. At any rate, not unless it makes it clear that it is doing a piece of "prospective overruling". There was no such reservation in the *Miliangos* case. In my opinion, therefore, when the House held in 1976 that judgment could be given for a debt in a foreign currency, it held that that was the law of the land – and that it was, and always had been, the law of the land – but judges had never before appreciated it. So, right from the time in 1854, when attachment of debts was introduced, a sum owing in foreign currency by a person within the jurisdiction here was a "debt" which could be attached – though no one had ever so thought before – and the courts had previously held the contrary.

My above views and the law notwithstanding, I am entirely *ad idem* with the JC's submission that the Federal Court decision is not applicable here. A distinction must be drawn on the facts obtaining in both these cases. In the *Ernest Cheong* case, the JD had applied to set aside the BN. Indeed, right at the outset, from the court of first instance (see *Re Ernest Cheong Yong Yin ex p United Malayan Banking Corporation Bhd* [2002] 2 CLJ 481) to the Federal Court, the judgment debtor had sought to impugn, for being time barred, the bankruptcy notice dated 24 January 1996 which was founded on a judgment obtained on 15 October 1987, due to the inclusion therein of interest amounting to RM179,297.01. Whereas, in the case before me, the JD seems to have slumbered and done nothing, until well after the JC obtained the receiving and adjudication order. No challenges had been made to the BN prior to this and the JD did not at any stage canvass the issue that the sum claimed in the BN was excessive – the BN was accepted without any demur.

Since no challenge was made on the BN or any amount set out and itemised in the BN it is incumbent upon this court to apply s. 3(2)(ii) of the Bankruptcy Act 1967 (the Act), which provides that the bankruptcy notice shall not be invalidated if "the sum specified in the notice as the amount due exceeds the amount actually due" unless the debtor gives notice to the creditor within the time allowed for payment (that is, within seven days of service of the bankruptcy notice – if effected within Malaysia) that he disputes the validity of the notice on the aforesaid grounds; in other words, the bankruptcy notice is regularised due to non-compliance with s. 3(2)(ii) by the debtor. This principle was clearly laid out and settled by the Federal Court in *Development & Commercial Bank Bhd v. Datuk Ong Kian Seng* [1995] 3 CLJ 307 *(Ong Kian Seng)*. In that decision, it was held, firstly, that a debtor who intends to show cause against a creditor's petition may only do so by motion supported by an affidavit (unless the court otherwise directs) as mandated under r. 18 of the Bankruptcy Rules 1969 (the Rules) and he shall also file a notice in Form 16 pursuant to r. 117 of the Rules. And, compliance of both rr. 18 and 117 are mandatory and are consequently not curable under s. 131 of the Act or r. 274 of the Rules. Secondly, s. 3(2)(ii) is also a mandatory provision which is not curable under s. 131 of the Act and r. 274 of the Rules. This authority from our apex court was applied – on the issue of validity of bankruptcy notice – in *Re Khaw Siew Suan; ex p Asia Commercial Finance (M) Bhd* [2000] 8 CLJ 516, where it was held: "In this case, notice under proviso (ii) of s. 3(2) of the Bankruptcy Act 1967 was not given and this objection was not lodged (by giving notice within seven days as stipulated) *vide* the summons-in-chambers under r. 18. Therefore, the contention on the excess debt should have been dismissed on this ground alone." It is of interest to note that even before *Ong*

*Kian Seng*, Haidar J (as he then was) had ruled, in *Re Kho Kok Siew, ex p MUI Bank Bhd* [1993] 1 MLJ 208, that: "In any event, it is too late for the debtor to raise this issue now (that the interest charged was in excess of that provided by O. 42 r. 12 of the Rules of the High Court 1980) as he had not given notice to the creditor under s. 3(2)(ii) of the Act." See also *Re Arunachalam, ex p Indian Overseas Bank Ltd* [1968] 1 MLJ 89.

It cannot escape my attention that the debtor may remonstrate that, as the ratio in *Ernest Cheong* was not then in place, how could he have raised the objection when the bankruptcy notice was issued. However, it must also be recognised that the creditor may also contend that had it not been for the *Ernest Cheong* ruling the bankruptcy notice would have been wholly unimpugnable and indefeasible. In my view, under such circumstances if at all this court should err, it should err on the side of the creditor, for the following three reasons:

(i) A creditor who seeks recovery on a judgment debt is acting on a court-sanctioned judgment debt.

(ii) It is not uncommon that a judgment debt may remain unsettled for over six years due to negotiations and the debtor's prevarication with feign intention to settle through paying in dribs and draps. This being so it is, in my opinion, not unreasonable to allow up to six years interest on a judgment debt in executions commenced between six to 12 years post judgment.

(iii) It preserves equanimity in the banking and commercial sector.

For the reasons stated above, I could find no impediment to the receiving and adjudication order being duly made as the JD had failed to comply with the mandatory provision in s. 3(2)(ii) of the Act. I had to allow the JC's appeal.